

SUBCHAPTER A : DEFINITIONS

§297.1. Definitions.

The following words and terms, when used in this chapter and in Chapter 295 of this title (relating to Water Rights Rules, Procedural), shall have the following meanings, unless the context clearly indicates otherwise:

Appropriations - The process or series of operations by which an appropriative right is acquired. A completed appropriation thus results in an appropriative right; the water to which a completed appropriation in good standing relates is appropriated water.

Appropriative right - The right to impound, divert, or use a specific quantity of state water acquired by law.

Aquifer Storage and Retrieval Project - A project with two phases that anticipates the use of a Class V aquifer storage well, as defined in §331.2 of this title (relating to Definitions), for injection into a geologic formation, group of formations, or part of a formation that is capable of underground storage of appropriated surface water for subsequent retrieval and beneficial use. Phase I of the project requires commission authorization by a temporary or term permit to determine feasibility for ultimate storage and retrieval for beneficial use. Phase II of the project requires commission authorization by permit or permit amendment after the commission has determined that Phase I of the project has been successful.

Baseflow or normal flow - The portion of streamflow uninfluenced by recent rainfall or flood runoff and is comprised of springflow, seepage, discharge from artesian wells or other groundwater sources, and the delayed drainage of large lakes and swamps. (Accountable effluent discharges from municipal, industrial, irrigation, or other uses of ground or surface waters may be included at times.)

Beneficial use - Use of the amount of water which is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

Certificate of adjudication - An instrument evidencing a water right issued to each person adjudicated a water right in conformity with the provisions of the Texas Water Code, §11.323, or the final judgment and decree in State of Texas v. Hidalgo Co. Water Control and Imp. Dist. No. 18, 443 S.W.2d 728 (Tex. Civ. App.-- Corpus Christi 1969, writ ref. n.r.e.).

Certified filing - A declaration of appropriation or affidavit which was filed with the State Board of Water Engineers under the provisions of Acts of the Thirty-third Legislature, 1913, General Laws, Chapter 171, §14, as amended.

Claim - A sworn statement filed pursuant to Texas Water Code, §11.303.

Commencement of construction - An actual, visible step beyond planning or land acquisition, which forms the beginning of the on-going (continuous) construction of a project in the manner

specified in the approved plans and specifications, where required, for that project. The action must be performed in good faith with the bona fide intent to proceed with the construction.

Commission - The Texas Water Commission.

Conservation - Those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

Dam - Any artificial structure, together with any appurtenant works, which impounds water. All structures which are necessary to impound a single body of water shall be considered as one dam. A structure used only for diverting water from a watercourse by gravity is a diversion dam.

Diffused surface water - Water on the surface of the land in places other than watercourses. Diffused water may flow vagrantly over broad areas coming to rest in natural depressions, playa lakes, bogs, or marshes. (An essential characteristic of diffused water is that its flow is short-lived.)

Director or executive director - The executive director, or an acting executive director of the Texas Water Commission, or any authorized individual designated by the executive director to act in his place for the commission unless a direct authorization from the executive director or acting executive director is required by the Texas Water Code or these rules.

District - Any district or authority created by authority of the Texas Constitution, either Article III, §52, Subsection (b), Subdivisions (1) and (2), or Article XVI, §59.

Domestic use - Use of water by an individual or a household for drinking, washing, or culinary purposes; for irrigation of lawns, or of a family garden and/or orchard when the produce is not sold; for watering of domestic animals; and for water recreation for which no consideration is given or received. If the water is diverted, it must be diverted solely through the efforts of the user.

Groundwater - Water under the surface of the ground other than underflow of a stream and underground streams, whatever may be the geologic structure in which it is standing or moving.

Hydropower use - The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

Industrial use - The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial feedlot operations, commercial fish production and the development of power by means other than hydroelectric.

Instream use - The beneficial use of instream flows for such purposes including, but not limited to, navigation, recreation, hydropower, fisheries, game preserves, stock raising, park purposes, aesthetics, water quality protection, aquatic and riparian wildlife habitat, freshwater inflows for bays and estuaries, and any other instream use recognized by law. An instream use is a beneficial use of water. Water

necessary to protect instream uses for water quality, aquatic and riparian wildlife habitat, recreation, navigation, bays and estuaries, and other public purposes may be reserved from appropriation by the commission.

Irrigation use - The use of water for the irrigation of crops, trees, and pastureland, including but not limited to golf courses and parks which do not receive water through a municipal distribution system.

Irrigation water use efficiency - the percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include but are not limited to evapotranspiration needs for vegetative maintenance and growth and salinity management and leaching requirements associated with irrigation.

Livestock use - The use of water for the open-range watering of livestock connected with farming, ranching, or dairy enterprises.

Mariculture - The propagation and rearing of aquatic species, including shrimp, other crustaceans, finfish, mollusks, and other similar creatures in a controlled environment using brackish or marine water.

Mining use - The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

Municipal per capita water use - The sum total of water diverted into a water supply system for residential, commercial, and public and institutional uses divided by actual population served.

Municipal use - The use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the preceding purposes or the application of municipal sewage effluent on land, pursuant to a Texas Water Code, Chapter 26, permit where:

(A) the application site is land owned or leased by the Chapter 26 permit holder; or

(B) the application site is within an area for which the commission has adopted a no-discharge rule.

Navigable stream - By law, Natural Resources Code §21.001(3), any stream or streambed as long as it maintains from its mouth upstream an average width of 30 feet or more, at which point it becomes statutorily nonnavigable.

100-year flood - The flood peak discharge of a stream, based upon statistical data, which would have a 1% chance of occurring in any given year.

Permit - The authorization by the commission to a person whose application for a permit has been granted.

Person - Any individual, corporation, organization, government, or governmental subdivision or agency, business trust, estate, trust, partnership and any other legal entity or association.

Pollution - The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any water in the state that renders the water harmful or detrimental to humans, animal life, vegetation, or property, or the public health, safety or welfare, or impairs the usefulness of the public enjoyment of the waters for any lawful or reasonable purpose.

Priority - As between appropriators, the first in time is the first in right, Texas Water Code, §11.027, except as provided by the Texas Water Code, §11.028.

Reclaimed water - Municipal wastewater that is under the direct control of the treatment plant owner/operator and which has been treated to a quality suitable for a beneficial use.

Recreational use - The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aesthetic land enhancement of a subdivision, golf course or similar development.

Register - The Texas Register.

Reservoir system operations - The coordinated operation of reservoirs within a common watershed or river basin or owned or operated by the same entity in order to optimize available water supplies.

Return water or return flow - That portion of state water diverted from a water supply and beneficially used which is not consumed as a consequence of that use and returns to a watercourse. Return flow includes sewage effluent.

Reuse - The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake or other body of state-owned water.

Runoff - That portion of streamflow comprised of surface drainage or rainwater from land or other surfaces during or immediately following a rainfall.

Secondary use - The reuse of state water for a purpose after the original, authorized use.

Sewage or sewage effluent - Water-carried human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places, together with any groundwater infiltration and surface waters with which it may be commingled.

Spreader dam - A levee-type embankment placed on alluvial fans or within a flood plain of a watercourse, common to land use practices, for the purpose of overland spreading of diffused waters and overbank flows.

State water - The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the stormwater, floodwater, and rainwater of every river, natural stream, and watercourse in the state. State water also includes water which is imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state.

Stormwater or floodwater - Water flowing in a watercourse as the result of recent rainfall.

Streamflow - The total water flowing within a watercourse.

Surplus water - For the purposes of Chapter 295 of this title (relating to Water Rights, Procedural) and this chapter, water taken from any source in excess of needs and not used beneficially for the purpose authorized by law.

Underflow of a stream - Water in sand, soil, and gravel below the bed of the watercourse, together with the water in the lateral extensions of the water-bearing material on each side of the surface channel, such that the surface flows are in contact with the subsurface flows, the latter flows being confined within a space reasonably defined and having a direction corresponding to that of the surface flow.

Waste - The diversion of water if the water is not used for a beneficial purpose; the use of that amount of water in excess of that which is economically reasonable for an authorized purpose when reasonable intelligence and reasonable diligence are used in applying the water to that purpose. Waste may include, but not be limited to, the unreasonable loss of water through faulty design or negligent operation of a water delivery, distribution or application system or the diversion or use of water in any manner that causes or threatens to cause pollution of water. Waste does not include the beneficial use of water where the water may become polluted because of the nature of its use, such as domestic or residential use, but is subsequently treated in accordance with all applicable rules and standards prior to its discharge into or adjacent to water in the state so that it may be subsequently beneficially used.

Water conservation plan - a strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for preventing or reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate planning document or may be contained within another water management document(s).

Water or water in the state - Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

Watercourse - A definite channel of a stream in which water flows within a defined bed and banks, originating from a definite source or sources. (The water may flow continuously or intermittently, and if the latter, with some degree of regularity, depending on the characteristics of the sources.)

Water right - A right acquired under the laws of this state to impound, divert, or use state water.

Watershed - A term used to designate the area drained by a stream and its tributaries, or the drainage area upstream from a specified point on a stream.

Water supply - Any body of water, whether static or moving, either on or under the surface of the ground, available for beneficial use on a reasonably dependable basis.

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